IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.317 OF 2007

Jeevat Constructions .. Petitioner

Versus

Union of India & Anr. .. Respondents

Mr.U.S.Samudrala for petitioner

Mr.Suresh Kumar for Union of India.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 18th October 2007.

P.C.

. The Award is impugned by the petitioner only on the ground that the Arbitral Tribunal failed to consider that the amount of security

deposit was Rs.54,893/- and which amount was claimed back. The Arbitral Tribunal could not have, therefore, upheld the action of forfeiture of security deposit. Submission of learned Counsel for petitioner is that the contract clause does not empower the Railways to forfeit the security deposit, unless the railways get the work done at the risk and cost of petitioner contractor from some third party and in that event only the security deposit can be forfeited.

2. The Arbitral Tribunal has considered this submission and after referring to the clause regarding earnest money and security deposit has observed that upon termination of the contract owing to default of contractor, the remedies that are available to the Railways are specified in clause 62 itself. Railways can carry out whole or part of the work from which the Contractor has been removed by the employment of required labour and material the cost of which shall include

lead, lift, freight, supervision and all incidental charges. Equally, it can measure up the whole or part of the work from which the Contractor has been removed and to get the same completed by another contractor. This is at the discretion at the Engineer whose decision is final. The contract says that the Railways shall be entitled to forfeit the whole or such portion of the security deposit as it may consider fit and to recover from the Contractor the cost of carrying out the work in excess of the sum which would have been payable to him.

3. The Arbitral Tribunal in this case has clearly observed that the delay in execution of the work was due to the failure of petitioner. There is correspondence on record. The reasons for delay have also not been found to be trustworthy and satisfactory. The Tribunal, therefore, concluded that the work was delayed for failure of the petitioner. Railways were

right in terminating the contract. It is in such circumstances, that it directed forfeiture of security deposit and rightly so. While doing so, it has rejected all counter claims also. In such circumstances, I do not find that the award which directs payment of only Rs.8931.26 by petitioner to Railways calls for any interference in the limited jurisdiction conferred upon this Court. Consistent with the contract stipulations, Arbitral Tribunal has considered the claim and awarded a meagre amount in favour of Railways while rejecting the counter claim. Petition dismissed. No costs.

(S.C.DHARMADHIKARI, J)